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In the Matter of)	
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Implementing a Nationwide, Broadband,)	
Interoperable Public Safety Network in)	PS Docket No. 06-229
the 700 MHz Band)	
)	
Development of Operational, Technical, and)	WT Docket No. 96-86
Spectrum Requirements for Meeting Federal, State)	
and Local Public Safety Communications)	
Requirements Through the Year 2010)	
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MetroPCS Communications, Inc. (“MetroPCS”),¹ by its attorneys, hereby respectfully submits its reply comments in response to the *Ninth Notice of Proposed Rulemaking*, FCC 06-181, released December 20, 2006 (the “*NPRM*”)² in the above-captioned proceedings. The following is respectfully shown.

² See Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Ninth Notice of Proposed Rulemaking*, FCC 06-181 (rel. Dec. 20, 2006), 72 Fed. Reg. 1201 (Jan. 10, 2007).

MetroPCS reiterates its belief that the public safety community needs an interoperable broadband network for first responders and the proper place to deploy this network is in 12 MHz of the existing 24 MHz of 700 MHz spectrum already dedicated for public safety uses. Consistent with this position, MetroPCS opposes the 11th hour proposal by Frontline Wireless, LLC (“Frontline”), to earmark a nationwide set aside of 10 MHz of prime, valuable 700 MHz commercial spectrum for a monopoly wholesale network provider, who would be obligated to allow public safety agencies priority, emergency access to their spectrum.”³ The Frontline proposal is ill advised, unnecessary, questionable on legal and policy grounds, and should be rejected by the Commission. The public safety community deserves a network built out and operated solely for its own use – not a shared network. Accordingly, the Commission should proceed with its current proposal to modify the rules governing 12 MHz of public safety 700 MHz spectrum to foster an interoperable broadband public safety network.

I. The Commission Should Reject the Frontline Proposal

A. The Frontline Proposal is Based on an Unproven Business Plan, and is Carefully Designed to Minimize Potential Bidders with the Potential, Practical Effect of Earmarking 10 MHz of Spectrum for Frontline

Frontline’s proposal contemplates extensive, complicated operating rules specially designed to fit its own wholesale, carrier-to-carrier business plan. If

³ Frontline Wireless, LLC (“Frontline”) Comments at i.

adopted, the Frontline approach could reduce dramatically, perhaps to only one company - - itself - - the number of bidders competing for what would otherwise be 10 MHz of highly valuable and sorely needed commercial spectrum. Encumbering 10 MHz of valuable commercial spectrum in this respect is completely unwise, unnecessary, and wholly unfounded. As MetroPCS has demonstrated in prior comments, there remains a scarcity of spectrum suitable to meet the public's ever-increasing demand for advanced broadband commercial wireless services.⁴ These demonstrated needs should not go unmet in order to accommodate Frontline's attempt to earmark nationwide commercial spectrum for itself and to make its proposed incursion in to the public safety spectrum. Indeed, as the public safety community has pointed out, it needs the allocated public safety spectrum for itself and the time has come to finalize the applicable rules. Adoption of the Frontline proposal could impede public safety use by fostering legal challenges which could inhibit the financing (if indeed Frontline otherwise was able to secure financing) necessary for the construction of a public safety network. Public safety has waited long enough for the needed interoperable network.

⁴ MetroPCS Comments at 11-12, Petition for Rulemaking of Cyren Call Communications Corporation, RM-11348, filed April 27, 2006. ("MetroPCS Cyren Call Comments"). The procedure in that docket of taking comments on a proposal which has already been dismissed for lack of jurisdiction was unusual. Reallocation of 30 MHz of 700 MHz Spectrum (747-762/777-792 MHz) from Commercial Use; Assignment of 30 MHz of 700 MHz Spectrum (747-762/777-792 MHz) to the Public Safety Broadband Trust for Deployment of a Shared Public Safety/Commercial Next Generation Wireless Network, *Order*, RM No. 11348 (rel. Nov. 3, 2006). However, MetroPCS submitted its comments because of the importance of retaining the 30 MHz of 700 MHz spectrum already allocated for commercial uses and the need to address certain aspects of Cyren Call's proposal.

Notably, if Frontline is correct that there is no legal barrier to the shared use of commercial spectrum by Public Safety users, and vice versa,⁵ then Frontline would be able to implement its wholesale operator business plan by purchasing 10 MHz of auctioned spectrum – without the Commission changing the auction process at all. It could then negotiate with the national public safety licensee for excess capacity on the public safety 12 MHz broadband network, in return for its helping to build out the public safety infrastructure. This being the case, the only apparent reason for Frontline to earmark spectrum is its hope that doing so will enable it to obtain 10 MHz of spectrum at a greatly reduced price by deterring other bidders. By limiting the auction of spectrum to only wholesale, nationwide network providers, Frontline is attempting to have 10 MHz of spectrum essentially set aside for itself. While there is a clear need for additional allocations of spectrum for retail commercial providers, Frontline has presented no evidence that a nationwide, wholesale operator will be able to proceed with a successful business plan; indeed, a plan that would have to be successful enough to fund the entire cost of building a nationwide infrastructure for a 4G, interoperable public safety broadband network.⁶ Frontline would create an auction process that does not appeal to major wireless competitors, with the result that the amount of funds raised by the auction would

⁵ The Frontline proposal is premised on the assumption that commercial users may have access to the allocated public safety spectrum, and that public safety users may have access to allocated commercial spectrum, without requesting Congressional intervention. However, we note that the Commission's *NPRM* broadband proposal has been questioned as to whether it exceeds the Commission's statutory authority. *See* RCC Consultants, Inc. Comments at 10-40. The Commission should carefully consider any proposal that may give rise to a legal challenge, especially when an issue as important as public safety is concerned.

⁶ Indeed, as the Commission is well aware, carrier-to-carrier plans of NextWave and PCS Development Corp. have experienced difficulty and resulted in bankruptcy filings.

be substantially diminished.⁷ Indeed, if Frontline's business plan was as strong as Frontline makes it appear, it is hard to imagine why other companies are not attempting the same or a similar business plan – without the additional complications that Frontline is proposing.

Not surprisingly, the Frontline proposal does not discuss what happens if its unproven business model of shared public safety/commercial usage under a nationwide wholesale service plan fails. If Frontline's Nextwavesque business goes bankrupt, the public safety community's reliance on it to build out a public safety broadband network infrastructure would result in, rather than avert, a national disaster. Placing the building of a public safety broadband, interoperable network on the hopes of an unproven business plan is the wrong approach for the Commission to take. Further, if Frontline is unsuccessful, the public safety community would be worse off than it is today since it would not have a network and its spectrum would be encumbered by the rights held by Frontline. The Frontline proposal includes no backup plan or criteria for what happens if its risky business plan fails. The public safety community should not be forced to rely on this experimental and highly risky plan to implement the broadband, interoperable network that they rightfully deserve. Instead, the first responder community

⁷ Major carriers tend to have their own retail distribution channels. If they bought this spectrum they would have to create an entirely new business model which has not been a glaring success.

should be given the necessary funding to construct and operate its broadband network rather than rely on market forces.⁸

B. The FCC's 12 MHz Proposed Allocation for Public Safety Broadband Use is Sufficient for Public Safety Needs

As MetroPCS demonstrated in its Comments, 12 MHz is more than sufficient for an interoperable, broadband network for public safety.⁹ First, the FCC has recognized that 10 MHz is sufficient for traditional commercial wireless networks to operate over an extended population of users¹⁰, as well as that a network only requires 2.5 MHz of paired spectrum to provide broadband data rates.¹¹ Second, the operating experience of MetroPCS in Detroit and Dallas demonstrates that state-of-the-art broadband networks that provide both voice and data services can be provided in 10 MHz of spectrum.¹² Third, the recent public safety efforts in both New York City and Washington, DC demonstrate that 10 MHz is more than sufficient to establish a robust broadband network. A network in New York City is being constructing using 10 MHz of spectrum using UMTS technology¹³, and

⁸ For example, if Frontline goes the route of NextWave, the first responder community would have to wait years before they would have the benefit of an interoperable network.

⁹ MetroPCS Comments at 3-4.

¹⁰ *See e.g.*, Service Rules for Advanced Wireless Services in the 1.7 and 2.1 GHz Bands; *Order on Reconsideration*, 20 FCC Rcd 14058 at para. 12 (rel. Aug. 15, 2005).

¹¹ Criterion Economics, "Improving Public Safety Communications," Peter Cramton, Thomas S. Dombrowsky, Jr., Jeffrey A. Eisenach, Allan Ingraham, and Hal Singer, February 6, 2007 at 31 ("Criterion Report").

¹² MetroPCS Comments at 4.

¹³ *See* Criterion Report at 31.

Alcatel-Lucent recently was awarded a contract to provide a seamless interoperable, redundant wireless broadband network of networks with the capacity to transmit video, data and voice communications with peak speeds of nearly 5 Mbps using only a paired 1.25 MHz channel, and 1xEV-DO Revision A technology.¹⁴

Lastly, numerous commenters noted that 12 MHz is more than adequate for this broadband public safety network.¹⁵ For example, AT&T notes that “new technologies make it possible to satisfy public safety needs for broadband services with 10 MHz of spectrum,” and that “[s]ome present-day technologies require as little as 1.25 MHz to provide broadband service.”¹⁶ Most revealingly, the First Response Coalition, a “501(c)(3) non-profit organization promoting the needs of America’s first responders in the areas of communications interoperability and data/information preparedness,” which consists of “tens of thousands of concerned citizens and first responders,” believes that:

Particular focus should be placed on using spectrum more efficiently, and not solely on the continued allocation of additional spectrum that ignores recent and ongoing technological advances. Rapidly-evolving technology has allowed users to make more efficient use of limited spectrum, in many cases, obviating the need for large, inefficient spectrum allocations.¹⁷

¹⁴ See Press Release, “National Capital Region First to Deploy 700 MHz Wireless Network for Public Safety Communication,” February 28, 2007, available at <http://www.dc.gov/news/release.asp?id=1071>

¹⁵ AT&T Comments at 9-11; CTIA Comments at 7-11; High Tech DTV Coalition Comments; Verizon Comments at 5-6.

¹⁶ AT&T Comments at 10.

¹⁷ First Response Coalition Comments at 6.

MetroPCS agrees that the public safety community should endeavor to use its existing spectrum in as efficient a way as possible. A robust, interoperable, broadband public safety network can be established in the 12 MHz of spectrum proposed by the Commission – with a proper focus on utilizing recent and technological advances to do so.¹⁸

C. Emergencies are not the Time to Test Risky Public-Private Partnership Experiments

The Frontline proposal envisions public safety relying upon use of 10 MHz of commercial spectrum only during times of national emergency. However, having a system that would have to rely on a complex priority access scheme during times of emergency would not be beneficial to either the public safety community, nor the public interest. The Commission previously has recognized that it is difficult to determine how priorities should be determined and when a particular priority

¹⁸ Cyren Call, in its Comments, argues that a 12 MHz network would be able to support only approximately 1.2 million public safety users, while the public safety community of first responders actually consists of 3 million public safety users. Cyren Call Comments at 14 and Appendix 1. As an initial matter, Cyren Call provides no basis for its assertion that there will be 3 million public safety personnel by 2018. In fact, this assertion is disputed in the Criterion Report, which asserts that approximately 1.9 million first responders work in the United States. Criterion Report at 29. In addition, the Cyren Call analysis assumes that all 3 million public safety users will be served within the 12 MHz of spectrum mentioned here. This analysis does not take into the account the 99.7 MHz of spectrum that is currently allocated for public safety use, much of which, based on recent reports, is largely unused today. MetroPCS Comments at 4-5. Further, first responders are distributed over the entire United States. Assuming that all first responders lived in only the top 10 cities, that would result in only 190,000 users per network. A 10 MHz network can serve easily even double or triple this amount of users during regular use, which means this capacity would suffice to meet even higher than normal usage during emergencies.

should take effect. In the Fourth Report and Order and Fifth Notice of Proposed Rule Making for the public safety 24 MHz of the 700 MHz band, the Commission stated, in response to a recommendation that the Commission adopt a priority scheme for the use of interoperability channels within this 24 MHz, that “[w]e remain concerned that creating yet another set of priority levels would serve only to create confusion during a large-scale or multiagency response. Thus, based on the information before us, it is premature to adopt a rigid access priority regime for the 700 MHz band.”¹⁹ The public safety community deserves a network solely dedicated to its own use, not one that needs to rely on priority uses during times of national crisis.

D. If Necessary, the Commission Can Provide Incentives to Commercial Carriers to Lease Spectrum and Provide Funding to the Public Safety Community

MetroPCS believes that a robust, interoperable broadband public safety network can and will be established in 12 of the 24 MHz of spectrum allocated for public safety in the 700 MHz band. However, if the Commission wants to make additional spectrum capacity available to the public safety community, or wants to secure additional funding for infrastructure build-out, the Frontline proposal is not the Commission’s best option. The Frontline proposal seeks to turn the nation’s critical public safety infrastructure over to a monopoly service provider. The rules proposed by Frontline would allow one – and only one - - commercial party to

¹⁹ The Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010, *Fourth Memorandum Opinion and Order*, WT Docket No. 96-86, 17 FCC Rcd 4736 at paras. 18-20 (rel. Mar. 14, 2002).

service the public safety community. It is possible that the commercial operator and the public safety community may not agree during negotiations with other. For example, Frontline notes that “The National Public Safety Licensee would not be obligated to take the service offered by the E Block winner.”²⁰ In addition, the Frontline scheme states that “In addition to constructing the public safety broadband network, the E Block licensee would be responsible for managing and operating it. It would be permitted to collect a reasonable network management fee from the National Public Safety Licensee to cover those reasonable costs of maintaining or upgrading the network that are attributable to public safety’s use of the network infrastructure.”²¹ The leverage that the winner of the E block auction would have over the National Public Safety Licensee would be great, and the National Public Safety Licensee would have no other option. The public safety community should not be held hostage to a single licensee which has a government-granted monopoly.

If the Commission actually wanted to provide for additional spectrum capacity for public safety users in times of emergency, rather than endorsing a monopoly service provider, it could provide incentives for all commercial licensees in the upcoming 700 MHz spectrum, to forge cooperative arrangements with public safety service providers. There is no requirement that additional spectrum capacity during times of emergency come from an adjacent band, and thus any

²⁰ Frontline Comments at 33.

²¹ *Id.* at 27.

potential winner of 700 MHz commercial spectrum would be able to provide excess capacity service to the public safety community.²² The public safety community would be better served by allowing commercial operators to compete to provide them service, rather than forcing public safety users to negotiate with one provider which has complete market power, as per the Frontline plan.

In fact, the Commission already has established voluntary rules for priority access service from CMRS providers to public safety personnel at the federal, state, and local levels.²³ While MetroPCS has noted above the understandable concerns with priority access rules, if the Commission ultimately selected this approach, there is no reason to limit the allowance of excess capacity to only one commercial operator. While the existing priority access rules for CMRS providers are voluntary, and may not be as robust as necessary for times of emergency, the Commission could reexamine these rules, and provide incentives for all commercial entities operating in the 700 MHz band to opt into them.

In addition, if the ability to generate a revenue stream for the public safety community was insufficient, the Commission could provide additional incentives to commercial purchasers of spectrum to provide aid and infrastructure to public safety entities. These additional incentives could be in the form of tax certificates, subsidized service costs, or discounts on universal service fund contributions that

²² This also might allow the public safety community to have multiple commercial operators in the same market providing capacity and services.

²³ The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010; Establishment of Rules and Requirements for Priority Access Service, WT Docket No. 96-86, 15 FCC Rcd 16720 (rel. Jul. 13, 2000).

would be strong enough to encourage commercial providers to offer service to the public safety community. By relying on established commercial carriers, the public safety community would not have to worry about having to negotiate with one party concerning fees and capacity. Thus, while MetroPCS continues to believe that 12 MHz of spectrum is sufficient for a public safety broadband network, and that the public safety community should adopt state-of-the-art technologies designed to maximize the capacity of the 12 MHz – if the Commission is inclined to do more, it could establish much better alternatives than the Frontline proposal.

Conclusion

As indicated in prior comments, MetroPCS submits that the proposal in the *NPRM* represents an important step toward optimizing the use of the public safety band. This bona fide FCC proposal should not be co-opted by Frontline's opportunistic proposal. If the Frontline proposal is to be given any serious consideration, the Commission should issue a special public notice seeking comment on the proposal. Otherwise, the result of Frontline's proposing its plan so late in the 700 MHz process would be to circumvent the normal comment and reply comments procedures. The Commission already is under a statutory deadline for all 700 MHz spectrum and consideration of the Frontline proposal jeopardizes the Commission's ability to engage in a reasoned rulemaking and still meet the statutory deadline. The rightful place for Frontline to advance its dramatic change to the use of the 700 MHz E Block is in the commercial 700 MHz service rules

proceeding (WT Docket No. 06-150).²⁴ Of course, the formal comment and reply comment periods for that proceeding ended on October 20, 2006. No doubt sensitive to the untimeliness of its proposal, Frontline opted to unveil its plan in a proceeding that is dealing with the question of a broadband public safety network in the 24 MHz of spectrum allocated to public safety; not in its rightful place, the 700 MHz band proceeding. The Commission should not allow so radical a proposal to be shielded from public scrutiny by being slipped in at the tail end of a long deliberative process.²⁵ Thus, if the Commission is inclined to give any serious attention to the Frontline proposal, in order to create an adequate record, it must first put the proposal out for comment and give all interested parties a fair opportunity to respond.

Respectfully submitted,

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²⁴ See In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 04-356, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4 of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, *Notice of Proposed Rule Making, Fourth Further Notice of Proposed Rule Making, and Second Further Notice of Proposed Rule Making*, FCC 06-114 (rel. Aug. 10, 2006), 71 Fed. Reg. 48506 (Aug. 21, 2006).

²⁵ See, e.g. Public Notice, DA 07-73 released February 16, 2007 (Commission issues special public notice seeking comment of interested parties on late-filed amendments to the Missoula Plan Intercarrier Compensation Proposal in CC Docket No. 01-92.)

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